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December 2, 2009

VIA ELECTRONIC FILING

Clerk

United States District Court for District of New Jersey
Newark Vicinage
50 Walnut St.
Newark, NJ 07101

**RE: In the Matter of Kevin Gingrich as Owner of a
63' Viking Motor Yacht, "Anxiolytic"
Case No.: 09-cv-1898-SDW-MCA
Our File No.: 2286G-0001**

Dear Sir/Madam:

This office represents the Petitioner, Kevin Gingrich, in the above-referenced matter. Enclosed please find the Petitioner's Motion for the Entry of a Default Judgment Against All Non-Filing Claimants.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact my office.

Very truly yours,

McGIVNEY & KLUGER, P.C.

Gary J. Intoccia

Gary J. Intoccia, Esq.

gintoccia@mcgivneyandkluger.com

GJI:rm

Enclosure

cc: Counsel of Record

McGivney & Kluger, P.C.

Gary J. Intoccia (GI 5329)

23 Vreeland Road, Suite 220

Florham Park, New Jersey 07932

(973) 822-1110

Attorneys for Petitioner, Kevin Gingrich

2286G-0001

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK VICINAGE**

IN THE MATTER OF:

In the Complaint of KEVIN GINGRICH
as Owner of a 63' Viking
Motor Yacht, "*Anxiolytic*" Bearing Hull
ID Number: VKY63014E989, For
Exoneration From or Limitation of Liability,

Petitioner.

Case No. 09-CV-1898-SDW-MCA

Civil Action in ADMIRALTY

**PETITIONER'S NOTICE OF MOTION
FOR ENTRY OF DEFAULT JUDGMENT
AGAINST ALL NON-FILING
CLAIMANTS**

RETURN DATE: JANUARY 4, 2010

TO: Richard M. Frick, Esq.
Price, Meese, Shulman & D'Arminio, P.C.
Mack-Cali Corporate Center
50 Tice Boulevard
Woodcliff Lake, NJ 07677

Val Wamser, Esq.
Nicoletti, Horning & Sweeney
401 Continental Plaza
Hackensack, NJ 07601

PLEASE TAKE NOTICE that on January 4, 2010, at nine o'clock in the forenoon, or as soon thereafter as counsel can be heard, Petitioner, Kevin Gingrich, by and through his undersigned counsel, McGivney & Kluger, P.C., pursuant to Fed. R. Civ. P. 55(b)(2), hereby requests that this Court enter Default Judgment against ALL NON-FILING CLAIMANTS.

PLEASE TAKE FURTHER NOTICE that Petitioner will rely upon the attached Certification of Counsel in support of this Motion as well as any exhibits referenced.

PLEASE TAKE FURTHER NOTICE that oral argument is requested only if this Motion is opposed. A proposed form of Order is annexed hereto.

McGIVNEY & KLUGER, P.C.
Attorneys for Petitioner,
Kevin Gingrich

By: /s/ Gary J. Intoccia
GARY J. INTOCCIA, Esq. (GI 5329)

and

McALPIN CONROY, P.A.
80 SW 8th Street, Suite 2805
Miami, Florida 33130
Tel.: (305) 810-5400
Fax: (305) 810-5401

By: /s/ Michael E. Conroy
MICHAEL E. CONROY, ESQ.
Florida Bar No. 845434
MConroy@McAlpinConroy.com

Dated: December 2, 2009

McGivney & Kluger, P.C.

Gary J. Intoccia (GI 5329)

23 Vreeland Road, Suite 220

Florham Park, New Jersey 07932

(973) 822-1110

Attorneys for Petitioner, Kevin Gingrich

2286G-0001

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK VICINAGE**

IN THE MATTER OF:

In the Complaint of KEVIN GINGRICH
as Owner of a 63' Viking
Motor Yacht, "*Anxiolytic*" Bearing Hull
ID Number: VKY63014E989, For
Exoneration From or Limitation of Liability,

Petitioner.

Case No. 09-CV-1898-SDW-MCA

Civil Action in ADMIRALTY

**CERTIFICATION OF COUNSEL IN
SUPPORT OF PETITIONER'S MOTION
FOR ENTRY OF DEFAULT JUDGMENT
AGAINST ALL NON-FILING
CLAIMANTS**

I, Gary J. Intoccia, Esq., of full age, certify as follows:

1. I am an attorney at law of the State of New Jersey and a partner with the law firm of McGivney & Kluger, P.C., attorneys for Petitioner, Kevin Gingrich, in the above-captioned matter. Accordingly, I am fully familiar with the facts set forth herein.

2. On April 22, 2009, Petitioner filed his Complaint for Exoneration from or Limitation of Liability and Motion requesting that this Court issue a notice to all potential claimants pursuant to 46 U.S.C. App. §30551 *et. seq.* and Rule F, Supplemental Rules of Civil Procedure. (DE 1 and DE 6).

3. Pursuant to Judge Susan D. Wigenton's July 21, 2009 Order, all claims were required to be filed no later than September 30, 2009. (DE 5).

4. Pursuant to Local Admiralty and Maritime Rule F, Petitioner published notice of the action for four consecutive weeks warning potential claimants to file their claims by September 30, 2009, or risk default. (DE6).

5. Additionally, Petitioner directly mailed copies of the notice to all known potential claimants pursuant to Rule F(4) of the Supplemental Rules of Civil Procedure.
6. On September 22, 2009, proof of publication was filed with this Court. (DE 10).
7. On September 28, 2009, Petitioner received one claim by Lincoln Harbor Enterprises, LLC. (DE 11).
8. Notwithstanding the party appearing within the monition period, all other potential claimants failed to appear or otherwise respond to the Complaint within the time prescribed by the Federal Rules of Civil Procedure.
9. Pursuant to this Court's October 16, 2009 Order, Judge Susan B. Wigenton entered Default pursuant to Rule 55(a) of the Federal Rules of Civil Procedure against all non-filing claimants. (DE 17).
10. Petitioner is, therefore, entitled to the entry of a Default Judgment against all non-filing claimants pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure on all counts of Petitioner's Complaint for Exoneration from or Limitation of Liability.

WHEREFORE Petitioner, KEVIN GINGRICH, respectfully requests that this Court enter Default against ALL NON-FILING CLAIMANTS on all counts of Petitioner's Complaint for Exoneration from or Limitation of Liability.

I certify that the foregoing statements that I have made are true. I am aware that if any of the foregoing statements that I have made are willfully false, I am subject to punishment.

/s/ Gary J. Intoccia
Gary J. Intoccia, Esq. (GI 5329)
McGivney & Kluger, P.C.
23 Vreeland Road, Suite 220
Florham Park, New Jersey 07932
(973) 822-1110
Attorneys for Petitioner,
Kevin Gingrich

Dated: December 2, 2009

McGivney & Kluger, P.C.
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Florham Park, New Jersey 07932
(973) 822-1110
Attorneys for Petitioner, Kevin Gingrich
2286G-0001

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK VICINAGE**

IN THE MATTER OF:

In the Complaint of KEVIN GINGRICH
as Owner of a 63' Viking
Motor Yacht, "*Anxiolytic*" Bearing Hull
ID Number: VKY63014E989, For
Exoneration From or Limitation of Liability,

Petitioner.

Case No. 09-CV-1898-SDW-MCA

Civil Action in ADMIRALTY

**ORDER ENTERING DEFAULT
JUDGMENT**

THIS MATTER having been opened to the Court by McGivney & Kluger, P.C., attorneys for Petitioner, Kevin Gingrich, by way of his application for Default Judgment to be entered on all claimants who may have a claim against Petitioner, but who have not filed, or have not timely filed, an Answer and Claim in response to Petitioner's Complaint. Petitioner argues that because the Court-imposed deadline for filing a claim in the instant litigation has passed, it is proper to enter Default Judgment against all such persons/entities who may have a claim against Petitioner or the Vessel in relation to the underlying dispute. Having reviewed the motion, the factual record, the absence of objection and the applicable law, Petitioner's motion is granted.

On December 9, 2008, Petitioner's vessel, a 63' Viking Motor Yacht, named "*Anxiolytic*," bearing Hull ID Number: VKY63014E989, caught fire while located in its slip at the Lincoln Harbor Yacht Club in Weehawken, New Jersey, without Petitioner's privity or

knowledge. Petitioner filed his Complaint for Exoneration from or Limitation of Liability pursuant to 46 U.S.C. § 30505, Supplemental Rule F and Local Admiralty Rule F, on April 22, 2009. To obtain exoneration or limitation of liability, a Petitioner must deposit with the Court, for the benefit of the claimants, a sum equal to the amount or value of the owner's interest in the vessel or security therefore. See Supplemental Rule F (2006). On July 20, 2009, the Court approved Petitioner's Stipulation for Value and directed the issuance of a Notice to all persons asserting claims with respect to which the Complaint seeks limitation and admonish them to file the respective claims with the Clerk of this Court by September 30, 2009, or be defaulted. Additionally, the Court directed Petitioner to publish the Notice in an approved newspaper, as specified by Local Admiralty and Maritime Rule F, once a week for four successive weeks prior to the date fixed for filing claims, as well as to mail a copy of the Notice to every person known to have any possible claim against the Vessel or Petitioner.

Petitioner published the Notice in the Newark Star Ledger for four consecutive weeks and submitted Proof of Publication to the Court. Furthermore, Petitioner mailed the Notice to all those known to have a possible claim. On September 28, 2009, Lincoln Harbor Enterprises, LLC filed a claim. On October 16, 2009, Petitioner obtained an Order from the Court entering Default pursuant to Federal Rule of Civil Procedure 55(a) against all non-filing claimants. Therefore, because the deadline for the submission of claims has passed, which was September 30, 2009, and Default has been entered, Petitioner is entitled to the entry of a Default Judgment against all non-filing claimants. Accordingly, it is hereby

ORDERED that Petitioner Kevin Gingrich's Motion for the Entry of a Default Judgment is GRANTED. Default Judgment is entered against all who may have a claim against Petitioner, *in personam*, and/or the Petitioner's Vessel, a 63' Viking Motor Yacht, named "*Anxiolytic*,"

bearing Hull ID Number: VKY63014E989, *in rem*, arising from the incident described in the Complaint, but who have not filed or have not timely filed an Answer and Claim in response to Petitioner's Complaint for Exoneration from or Limitation of Liability.

DONE AND ORDERED in Newark, New Jersey, this ____ day of _____, 2010.

U.S.D.J.